

sold to Top 50 affiliates for the lucrative Access period. This severely limits the economic potential of these programs, and makes the traditional networks less attractive purchasers of original entertainment shows. Thus, for example, "Evening Shade," which was originally broadcast by CBS, and "Married...With Children," which is a FOX Network program, had comparable ratings in their network runs. In syndication, however, "Married...", which is not subject to PTAR,<sup>29</sup> is a success, ranking 10th among all syndicated programs in February, 1994. "Evening Shade," on the other hand, was pulled out of syndication by its distributor because it could not obtain clearances in the major markets.<sup>30</sup>

4. The original networks cannot compete effectively as producers of first-run programming. Because their productions are banned from the Access period when license fees and barter revenue tend to be the highest, it is simply uneconomic for a network or its owned stations to produce for first-run. The Commission should be striving to encourage more program sources in the Access period specifically and in the first-run marketplace generally, not locking them out with restrictive interpretations of PTAR.

The first-run marketplace is highly concentrated, and is

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<sup>29</sup> "Married...With Children" is shown in Access by network affiliates in Chicago, Birmingham and Charleston.

<sup>30</sup> Electronic Media, May 2, 1994.

dominated by King World and the six major Hollywood studios who also dominate network program supply. For the 1992-93 season, the top six first-run syndicators (King World, Paramount, Disney, Multimedia, Warner and Fox) controlled over 72% of the market.<sup>31</sup> The three Hollywood studios included in this group -- Disney, Warner and Fox -- also were the source of 49% of the outside-supplied entertainment series programs the three networks premiered that season.

PTAR reduces the ability of the networks to become viable competitors in first-run production. Their unfettered participation in this market would increase diversity, competition and station choice.

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<sup>31</sup> Concentration in the syndication market (off-network and first-run) recently became even more pronounced with the merger of Viacom and Paramount, ranked second and fifth in terms of households reached with their syndicated product. The combined companies enjoy nearly a 43% share of the syndication marketplace. King World controls 21.5%. Thus, two companies -- Viacom/Paramount and King World -- currently control nearly 65% of the total syndication market. Paul Kagan Associates, TV Program Stats, April 30, 1994, p. 3.

V. COMMISSION REVIEW OF PTAR SHOULD NOT BE LINKED TO FIN/SYN

In its filing with the Court in response to a Petition for a Writ of Mandamus filed by First Media, the Commission indicated that it planned to consider PTAR in conjunction with its review of the fin/syn rules, which must be commenced no later than May, 1995 and completed by November of that year. NBC urges the Commission not to apply the timetable established for fin/syn to its review of PTAR. The Commission delayed the final repeal of the fin/syn rules in order to monitor network behavior in the program acquisition marketplace.<sup>32</sup> There is no reason to subject review of PTAR to a similar delay, and to do so would be contrary to the public interest.

Headlines remind us on a daily basis that the television landscape is changing not year by year, but week by week. Outdated or unjustified regulatory restrictions place an enormous burden on the parties they affect, artificially advantaging some competitors at the expense of others. As these Comments have shown, as currently drafted and applied PTAR unduly restricts station programming discretion, and thereby operates to lessen diversity and competition. While regulatory change at a leisurely pace may

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<sup>32</sup> The networks have appealed the Commission's decision to retain the fin/syn rules for two additional years to the U.S. Court of Appeals for the 7th Circuit. Capital Cities/ABC et al. v. FCC, Case No. 93-3458 and consolidated cases.

have been acceptable in less revolutionary times, it cannot be countenanced in today's fast-changing world. The Commission should not wait another year before seriously addressing the adverse effects of PTAR.

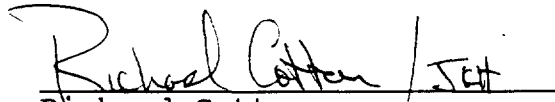
The first of the three petitions seeking relief from PTAR was filed over seven years ago. Commission review and modification of the Rule has already been subject to considerable delay. NBC urges the Commission immediately to commence a separate rulemaking proceeding to review PTAR and to proceed to expeditiously conclude it.

#### VI. CONCLUSION

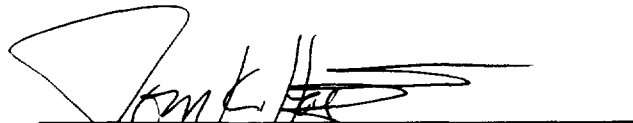
As NBC has argued in these Comments, marketplace conditions no longer support the restrictions of PTAR and the effect of the Rule is to reduce diversity and competition in the marketplace. Affiliates of NBC, CBS and ABC should be given the same freedom to acquire programs they believe will serve their communities as is enjoyed by the FOX affiliates, independent stations and cable operators they face as competitors in local markets. For these and the other reasons stated herein, NBC urges the Commission promptly

to commence a rulemaking proceeding to evaluate the continued efficacy of PTAR.

Respectfully submitted,

  
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